



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes CNL

### Introduction

This hearing dealt with the tenant's application pursuant to section 49 of the *Residential Tenancy Act* (the "Act") for cancellation of a 2 Month Notice to End Tenancy for Landlord's Use.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant represented themselves with the assistance of family members and others.

As both parties were present service of materials was confirmed. The tenant confirmed receipt of the landlord's 2 Month Notice dated October 25, 2019. The landlord confirmed receipt of the tenant's application for dispute resolution dated November 12, 2019 and evidence. I find that the 2 Month Notice and tenant's materials were served on the respective parties in accordance with sections 88 and 89 of the Act.

The landlord stated that they had not served the tenant with all of their evidence. Rule 3.15 of the Residential Tenancy Branch's (the RTB's) Rules of Procedure requires that respondents provide their written evidence at least 7 days prior to a hearing. As the landlord has confirmed that they have not served some of their evidence on the tenant and I find that it would be prejudicial to consider materials not properly served I exclude any pieces of the landlord's evidence that was not served on the tenants in accordance with the Act.

### Issue(s) to be Decided

Should the 2 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

### Background and Evidence

This periodic tenancy began on February 1, 2019. Monthly rent is \$1,900.00 payable on the first of each month. The rental unit is a single detached home with 4 bedrooms occupied by the tenant and family members.

A 2 Month Notice dated October 25, 2019 was issued on the tenant. The 2 Month Notice provides the reason for the tenancy to end is that the rental unit will be occupied by the landlord or the landlord's close family member.

The tenant submitted into documentary evidence a written tenancy agreement showing that a new occupant, KG is commencing a tenancy on February 1, 2020 for monthly rent in the amount of \$1,900.00. The agreement is dated October 15, 2019 and is signed by the landlord and the new occupant.

The landlord testified that the new occupant is their adult son who is currently residing with them. The landlord said that the son will move out of the family home for the first time to occupy the rental unit. The landlord gave no further evidence about the reason for the move, the timing of the issuance of the 2 Month Notice, or whether the son will be the sole occupant of the 4-bedroom building.

### Analysis

Section 49(8) of the *Act* provides that a tenant may dispute a 2 Month Notice by making an application for dispute resolution within 15 days of receiving the notice. When a deadline falls on a date that the Residential Tenancy Branch is not open the deadline is automatically extended to the next business day.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 2 Month Notice.

In the present case the 2 Month Notice was received by the tenant on October 25, 2019 and the tenant filed their application on November 12, 2019, within the 15 days provided under the *Act*.

The notice provides the reason for the tenancy to end is that the landlord or close family member intends to occupy the rental unit. The landlord testified that their son intends to occupy the rental building and have provided a signed tenancy agreement as evidence of their intention.

I find the minimal evidence of the landlord to be insufficient to meet their evidentiary burden and that their submissions generate more questions about their good faith intentions than they allay. The landlord provided no cogent explanation as to why their son is moving into the rental unit at this specific time when they have been content to reside with the landlord in their family home. The rental building is a detached home with four bedrooms currently occupied by four individuals. The landlord gave no explanation of whether their son will be the sole occupant of

the building or whether there would be additional occupants. While it is not wholly unreasonable for a single individual to occupy an entire detached home by themselves, I find that the lack of details in the landlord's explanation to raise significant doubts about the landlord's intentions.

Based on the evidence of the parties, including the documentary materials and testimonies, I find that the landlords have not met their evidentiary burden to establish the basis for the tenancy to end. Consequently, I allow the tenant's application to cancel the 2 Month Notice.

### Conclusion

The tenant's application to cancel the 2 Month Notice is granted.

The 2 Month Notice of October 25, 2019 is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 6, 2020

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Residential Tenancy Branch